REMARKS

Claims 1-6 are all the claims pending in the application.

I. RESPONSE TO REJECTION UNDER 35 U.S.C. § 103

Referring to pages 2 and 3 of the final Office Action, Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of U.S. Patent No. 6,506,747 ("Betageri") and U.S. Patent No. 6,958,339 ("Kubota") in view of Haleblian et al.(J of Pharmaceutical Sciences, (1969), 58, pp 911-929), Chemical & Engineering News, Feb. 2003, Brittain et al. (Polymorphism in Pharmaceutical Solids, pages 1-2, 185), US Pharmacopia, 1995, pp 1843-1844, Muzaffar et al. (J. of Pharmacy (Lahore) 1979, 1(1), 59-66), Jain et al. (Indian Drugs, 1986, 23 (6), Taday et al. (J of Pharm. Sci, 92 (4), April 2003, 831-838) and Concise Encyclopedia Chemistry, page 872-873 (1993).

Applicants respectfully traverse. The presently claimed subject matter is unobvious over the applied combination of art.

At page 3 of the final Office Action, the examiner queries whether Applicants have "any factual support as to any unexpected or unobvious properties *vis-à-vis* the prior art compounds."

In response, Applicants submit a Declaration Under 37 C.F.R. § 1.132 from Dr. Hirokazu KUBOTA, a co-inventor of the present application. Dr. Kubota's Declaration includes the table initially presented in the Amendment Under 37 C.F.R. § 1.116 filed May 29, 2007, in which the presently claimed compound (Compound A) and three types of comparative compounds are compared in terms of CRACC inhibitory activity and selectivity.

The comparative compounds in the table of Dr. Kubota's Declaration are not compounds disclosed in the Kubota and Betageri references. However, it is well-settled that an applicant may compare the claimed subject matter with prior art that is closer to the claimed subject matter than the prior art relied upon by the examiner. *See, e.g., In re Holladay*, 584 F.2d 384, 199 USPQ 516 (CCPA 1978); *Ex parte Humber*, 217 USPQ 265 (Bd. App. 1961). In the comparison table of Dr. Kubota's Declaration, Applicants compare the presently claimed compound to comparative compounds having structures that are closer to the structure of the presently claimed compound than those structures found in the applied prior art. Accordingly, the evidence of

unexpectedly superior results established by the comparison table in Dr. Kubota's Declaration must be considered and given patentable weight and indeed serves to rebut the alleged *prima facie* case of obviousness.

For the foregoing reason, as well as the reasons presented in the May 2007 Amendment and the Response filed January 22, 2007, which are hereby incorporated by reference, Applicants request reconsideration and withdrawal of the present §103 rejection.

II. RESPONSE TO DOUBLE PATENTING REJECTION

Referring to page 9 of the final Office Action, Claims 1-7 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-8 of Kubota in view of Haleblian, Brittain, Chemical & Engineering News, Muzaffar, Jain, Taday, and Concise Encyclopedia Chemistry.

Applicants respectfully traverse. The presently claimed subject matter is not an obvious variation of the subject matter defined by Claims 1-8 of Kubota in view of the applied combination of art.

The analysis employed in an obviousness-type double patenting determination parallels the guidelines for a 35 U.S.C. 103(a) rejection *See*, MPEP § 804. Therefore, any objective indicia of nonobviousness is probative.

The comparison table set forth in Dr. Kubota's Declaration contains probative objective indicia of nonobviousness. Therein, Applicants compare the presently claimed compound to comparative compounds having structures that are closer to the structure of the presently claimed compound than those structures found in the applied prior art. For the reasons presented at Section I above and in Dr. Kubota's Declaration, the evidence of unexpectedly superior results established by the comparison table at Dr. Kubota's Declaration must be considered and given patentable weight and serves to rebut the present obviousness-type double patenting rejection.

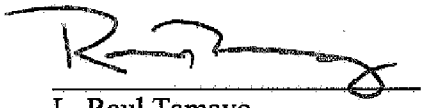
Withdrawal of the present obviousness-type double patenting rejection is requested.

III. CONCLUSION

Reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the examiner feels may be best resolved through a personal or telephone interview, the examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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